

**BEFORE THE GOVERNING BOARD
OF THE MC FARLAND UNIFIED SCHOOL DISTRICT**

In the Matter of the Layoffs of:

Certificated Employees of the McFarland
Unified School District,

Respondents.

OAH Case No. L2011030535

PROPOSED DECISION

The hearing in the above-captioned matter was held on April 11, 2011, at McFarland, California. Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), presided. Complainant was represented by James R. Lynch and Rodrigo E. Guevera, GCR, LLP. Respondents were represented by Joshua F. Richtel, Tuttle & McCloskey, excepting Respondents Allan Navarro and Cindy Bowman, who represented themselves.

Oral and documentary evidence was received at the hearing, the case was argued, and the matter submitted for decision on the hearing date. The Administrative Law Judge hereby makes his factual findings, legal conclusions, and orders, as follows.

FACTUAL FINDINGS

1. Complainant Kim McManaman filed the accusations¹ in this proceeding in her official capacity as Assistant Superintendent of the McFarland Unified School District (District).

2. The following persons are certificated employees of the District, and are hereafter referred to as Respondents: Mona Lisa Aguilar; Carlota Amesquita; Anthony Arguello; Leticia Arguello; Cindy Bowman; Aliana Buenrostro; Patricia Carrillo; Anell Chavez; Armando Cruz; Vanessa DeLeon; Vivian Fleischer; Tamara Gallegos; Eric Garcia; Zenaido Garza; Amber Gates; Maria Gutierrez; Patricia Gutierrez; Sarah Kay; Brenda Lopez; Angie

¹ The term "accusation" refers to a type of pleading utilized under the Administrative Procedure Act, Government Code sections 11500 and 11503, which provides the procedural framework for hearings of this type. It should be made clear that the Respondents are not "accused" in the every-day sense of that word; they have done nothing wrong. Instead, it might be said that they are accused of not having enough seniority or qualifications to retain their positions with the District in the face of a resolution to reduce positions.

Maldonado; Kent McKee; Fabiola Medina; Noemi Moreno; Sigifredo Murillo; Allan Navarro; Enrique Osuna; David Perez; Jasmine Reed; Socorro Robles; Gustavo Rojo; and, Matthew Woessner.

3. (A) On March 8, 2011, the Governing Board (Board) of the District adopted resolution number 1011-10, entitled “McFarland Unified School District Reduction of Particular Kind of Service” (Reduction Resolution). (See Ex. 1 attached to Ex. 2.) The purpose of the Reduction Resolution was to reduce and discontinue particular kinds of certificated services no later than the beginning of the 2011-2012 school year. Specifically, the resolution requires the reductions of 43.2 “FTE”—Full Time Equivalents—by reducing various types of services.

(B) The FTE’s that the Board determined to reduce are described in the Reduction Resolution, as follows:

<u>Kind of Service to be Reduced</u>	<u>FTE</u>
K-7, courses requiring Multiple Subject credential	20.0
English	4.0
Math	2.4
Science	2.0
Social Science	2.2
Home Economics	.6
Alternative Education	2.0
Resource Specialist	1.0
High School Counselor	1.0
School Psychologist	1.0
BTSA Coordinator	1.0
Dean of Student Discipline (MHS)	1.0
Teacher Opportunity Class (MMS)	1.0
Learning Center Program Coordinator	1.0
Athletic Director	1.0
Middle School Vice Principal	1.0
Elementary School Vice Principal	1.0
Total FTE to be Reduced:	43.2

4. The services which the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued under Education Code section 44955.²

5. The decision by the Board to reduce or discontinue services was neither arbitrary nor capricious, but rather was a proper exercise of the District’s discretion given reductions

² All further statutory references are to the Education Code.

in the state budget, uncertainty regarding the state budget, and the District's financial resources.

6. The reduction and discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Board.

7. As part of the Reduction Resolution, the Board adopted "Tie-Breaking Criteria Pursuant to Education Code section 44955(b)." That tie-breaking criteria was to be used in the event that two or more teachers facing layoff had the same seniority date. The District did not abuse its discretion in the adoption of the tie-breaking and competency criteria.

8. (A) On or about March 10, 2011, each Respondent was given written notice that pursuant to Education Code sections 44949 and 44955, their services would not be required in the 2011-2012 school year (hereafter the preliminary notices). Thereafter, Respondents requested a hearing, and each was served with an Accusation prior to March 28, 2011. Each Respondent identified in Factual Finding 2 filed a notice of defense.³

(B) The District sent notices to other employees besides Respondents, but not all of those employees requested a hearing. This follows from the fact that 32 Respondents were listed in Exhibit 7, but 41 are shown on Exhibit 4 as being subject to lay off, with one other teacher, Ricardo Martinez, shown as having resigned.⁴

9. After the accusations were served, and prior to the hearing, the lay off notices to Johnny Samaniego and Christi Stanford Bowman were withdrawn by the District, and hence they are not treated as Respondents in this case.

10. In the course of the reduction in force process, the District created a seniority list. That seniority list took into account a number of factors, the primary factor being each certificated employee's first date of paid service. However, other factors, such as credential types, current assignment, and information that would be pertinent to any tie-breaking was set forth on the seniority list.

11. The District reviewed its records and the seniority list to determine which employees might "bump" other employees because they held credentials in another area and were entitled to displace a more junior employee. The District ultimately allowed some senior employees to bump other employees; they are Louie Gomez, Maria Perez, and David

³ Respondent Allan Navarro did not file a timely notice of defense, but the District waived objection to his participation in the proceeding, and hence he is identified as a Respondent in Factual Finding 2.

⁴ In Exhibit 4, those to be laid off have their names highlighted in bold print. Mr. Martinez' name is listed in red to draw attention to his status.

Perez, who bumped into positions held by junior employees. However, during the course of the hearing, no Respondent established their right to bump another certificated employee.

12. The District applied tie-breaking criteria to ascertain the relative seniority among employees who had the same seniority date. However, some ties remained unresolved. The parties stipulated that after the issuance of the proposed decision, and prior to May 15, 2012, a lottery or drawing would be held to resolve such ties. It was further stipulated that Mr. Marrietta, of the teacher's association, or some other such representative of the association, would attend the tie-breaking lottery.

13. During the hearing, it was stipulated that the seniority date of Respondent Eric Garcia should be November 20, 2006, and the seniority list will be modified accordingly.

14. During the hearing, the District rescinded or withdrew the lay off notices previously served upon David Perez and Cindy Bowman.

15. No certificated employee junior to any Respondent was retained by the District to render a service for which a Respondent was certificated and qualified to render.

LEGAL CONCLUSIONS

1. Jurisdiction was established to proceed in this matter, pursuant to sections 44949 and 44955, based on Factual Findings 1 through 8.

2. A school district may reduce particular kinds of services (PKS) within the meaning of section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.) The Court of Appeal has made clear that a PKS reduction does not have to lead to less classrooms or classes; laying off some teachers amounts to a proper reduction. (*Zalec v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838, 853-85; see also *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 631, 637 [reduction of classroom teaching can be a reduction of a PKS; as long as there is a change in the method of teaching or in a particular kind of service in teaching a particular subject; any amount in excess of the statutory minimum may be reduced]; *California Teachers Assn. v. Board of Trustees* (1982) 132 Cal.App.3d 32.)

3. The services to be discontinued in this case are particular kinds of services within the meaning of section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949. This Conclusion is based on Factual Findings 3 through 6, and Legal Conclusion 2.

4. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) At the same time, junior teachers may be given retention priority over senior teachers—may be “skipped”—if the junior teacher possesses superior skills or capabilities not possessed by their more senior colleagues. (*Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers, Local 2393 v. Governing Bd. of Santa Clara Unified School Dist.* (1981) 116 Cal.App.3d 831.)

5. No Respondent established that they had the right to bump a junior employee or that the District improperly skipped another teacher, based on Factual Finding 11 and Legal Conclusion 4.

6. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render, based on Factual Findings 11 and 15.

7. The District may lay off the Respondents, excepting Respondents Cindy Bowman and David Garcia, in reverse order of seniority, in order to reduce services, based on all the foregoing.

ORDER

1. The Accusations are sustained, except as set forth hereafter.

2. The seniority date of Respondent Eric Garcia shall hereafter be November 20, 2006.

3. Notice shall be given to Respondents that their services will not be required for the 2011-2012 school year because of the reduction and discontinuance of particular kinds of services. Specifically, the District may give such lay-off notices to the following certificated employees, in inverse order of seniority, the most junior first, and the most senior last, after a tie-breaking lottery is held pursuant to the parties’ stipulation: Mona Lisa Aguilar; Carlota Amesquita; Anthony Arguello; Leticia Arguello; Aliana Buenrostro; Patricia Carrillo; Anell Chavez; Armando Cruz; Vanessa DeLeon; Vivian Fleischer; Tamara Gallegos; Eric Garcia; Zenaido Garza; Amber Gates; Maria Gutierrez; Patricia Gutierrez; Sarah Kay; Brenda Lopez; Angie Maldonado; Kent McKee; Fabiola Medina; Noemi Moreno; Sigifredo Murillo;

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Allan Navarro; Enrique Osuna; Jasmine Reed; Socorro Robles; Gustavo Rojo; and, Matt Woessner.

April 18, 2011

Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings